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IN THE

Supreme Court of the United States

OCTOBER TERM, 1949

No. 620

M. LOUCOPANTIS, G. DIAMATAKIS, I. SARGOLAGOS, M. POSSES, K. METAXATOS, S. MARIONS, G. EFSTRATIOU, M. MPOUNAKIS, M. PSOMOPOULOS, P. TRIANTAFILOU, E. MPAIKAS, E. CHALISARIKAS, M. KIPREOS, and A. ATHANASIOU,

Petitioners,

v.

STEAMSHIP "OLYMPOS", her boats, tackle, apparel, etc.; KOUTSOUKOS, as Master of said vessel; and COULOUKOUNDIS, LTD., as Operator of said vessel; and KOULOUTHROS, as Owner of said vessel,

Respondents.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

BARRON F. BLACK,
HUGH S. MEREDITH,
WILLIAM C. COUPLAND,
Counsel for Respondents

Norfolk, Virginia

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Respondents.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

I. THE OPINIONS BELOW

The opinion of the Court of Appeals for the Fourth Circuit is reported at 177 F. (2d) 785 and 1949 AMC 2042. The opinion of the District Court for the Eastern District

of Virginia is unreported, but may be found in Appellants' Appendix, page 11 in the Court of Appeals below, which, together with Appellees' Appendix, form part of the stipulated record herein.

II. STATEMENT OF THE CASE

The petitioners joined the Greek Steamship "OLYMPOS" at Antwerp for round voyages ending at that port. On September 30, 1947, the vessel arrived at Hampton Roads, Virginia and proceeded to load coal. On that same date the members of the crew were paid in full for the preceding voyage ending at Antwerp on September 9th, 1947, the crew having expressly requested that they be paid in dollars upon the vessel's arrival in the United States. In the late evening of September 30, 1947, fourteen of the petitioners demanded of the Captain, among other things, that steam heat and hot and cold running water be immediately provided in the crew quarters. The Captain agreed to all of their demands with the exception of steam heat and hot and cold running water, explaining that such would require an extended delay in this country; but that even this would be provided when the vessel went in for annual overhaul on her return to Europe. On the morning of October 1, 1947, after completion of loading, and while the vessel was at Newport News, Virginia for bunkers, the leader of these petitioners renewed their demands, stating that they would immediately leave the vessel unless these demands were met promptly. The Captain asked for a delay of one hour within which to consult with the owner of the vessel who was at the time in New York, but the men denied him this request, left the vessel and on the next day filed their libel. On the day that the libel was filed the Captain received authority from the Greek Consul in New York to discharge the men

by mutual consent and pay their wages to date of discharge. On the following day, October 3rd, a representative of the Greek Consulate arrived at Newport News and exhorted the men to return to the ship, but without success. Whereupon petitioners, with the exception of two who had been ordered detained on the vessel by the United States Immigration authorities, were, in the presence of, and under the supervision of, the Consular representative, paid all their earned wages for which they duly receipted, were discharged by mutual consent and their seamen's books delivered to them.

The above facts are supported by the statement of the master, (Resp. Ex. A, Appts.' App. 8) filed pursuant to stipulation of proctors for the respective parties as being what the master would testify to were he present in person at the trial; are in accordance with the findings of the District Court (Appts.' App. 11) and are not contradicted by petitioners, only two of whom testified in the case.

On October 6th, 1947, the two detainees, Psomopoulos and Mpounakis, in accordance with a written stipulation of proctors for the parties, agreed upon before the court, (Appts.' App. 3) were delivered to the United States Immigration authorities and lodged in jail pending transshipment. At the time they were turned over to the Immigration authorities they were paid their earned wages to date of discharge and received their seamen's books. Both within a few days joined other vessels. (Appees.' App. 18 and 19)

The libel, (Appts.' App. 1) insofar as pertinent to the issues raised on the petition for writ of certiorari, alleged that the crew quarters were uninhabitable, and since the master would not remedy the conditions, the petitioners, on October 1, 1947, requested that they be discharged; that they demanded their wages, the payment of which was refused, and that they were therefore entitled to two days'

pay for each and every day their wages were withheld. It was further alleged that because of the unsanitary and unseaworthy crew quarters, the detention of two of the petitioners, Psomopoulos and Mpounakis, aboard said vessel, by order of the United States Immigration authorities, was both cruel and inhumane; entitling them to transshipment out of the United States on some other vessel. It was also further alleged that the petitioners were refused their respective seamen's books to the loss and damage of each of the sum of $1,000.00. A further claim, extraneous to the libel, was made at the trial of the cause, for severance pay or damages for breach of contract, in that the respondents had supplied an unseaworthy vessel. The District Court dismissed the libel (Appts.' App. 9) and its decision was affirmed by the Court of Appeals. 177 F (2) 785, 788.

III. SUMMARY OF ARGUMENT

A The Issues Presented by Petitioners Concern Questions of Fact Which Were Decided Against Them By the Courts Below.

(1) The vessel was not unseaworthy.

(2) Petitioners were promptly paid their earned wages and their seamen's books were promptly delivered to them.

(3) Petitioners neither requested nor were they entitled to a sum equal to the costs of repatriation.

(4) The vessel discharged all of its obligations to the two petitioners who were detained by order of the United States Immigration authorities.

(5) Petitioners are not entitled to the waiting time provisions of 46 USCA, Section 596.

(6) Petitioners were not entitled to severance pay or damages for breach of contract.

(7) Petitioners released the vessel from any and all claims at the time of their respective discharges.

B Respondents' Exceptions To Petitioners' Request for Admission of Facts and Genuineness of Documents were Properly Sustained by the Courts Below.

IV. ARGUMENT

A The Issues Presented by Petitioners Concern Questions of Fact Which Were Decided Against Them by the Courts Below.

Not only were the issues of fact decided against the petitioners in the District Court, with supporting evidence, but these findings were concurred in by the Court of Appeals.

This court has repeatedly held that the findings of fact of a lower court will not be reversed where there is evidence to support such findings.

Risty v. *Chicago R.I.P. Railway Co.,* 270 U. S. 378; 70 L. Ed. 641.
The Abbotsford, 98 U. S. 440; 25 L. Ed. 168.
Davis v. *Schwartz,* 155 U. S. 631, 39 L. Ed. 289.
German Savings Society v. *Dormitzer,* 192 U. S. 125; 48 L. Ed. 373.
Houston Oil Co. v. *Goodrich,* 245 U. S. 440; 62 L. Ed. 385.
Wisconsin Electric Co. v. *Dumore Co.,* 282 U. S. 813; 75 L. Ed. 728.

This court has also repeatedly held that concurrent findings of fact of the two courts below, will be accepted by this court *unless shown to be clearly erroneous.*

Luchenbach v. *McCahan Sugar Refining Co.,* 248 U. S. 139; 145; 63 L. Ed. 170, 174.

The Wildcroft, 201 U. S. 378, 387; 50 L. Ed. 794, 796.
The Carib Prince, 170 U. S. 655, 658, 42 L. Ed. 1181, 1185.
Mahnich v. *Southern Steamship Co.,* 321 U. S. 96, 98; 88 L. Ed. 561, 564.

(1) *The Steamship "OLYMPOS" was not unseaworthy.*

Petitioners, in their supporting brief, (p. 15) recite:

> "The facts as stated in the Petition for a Writ of Certiorari herein prove that the Steamship "OLYMPOS" was unseaworthy as a matter of law and that upon the failure and refusal of Respondents to repair the vessel, the Petitioners were entitled to leave the vessel and to obtain their discharges, Seamen's Books, and wages to date, repatriation, and severance pay or damages for breach of contract."

Each and every claim asserted is predicated upon their assumption that the vessel was unseaworthy, an issue of fact. *Luchenbach* v. *McCahan Sugar Refining Co., supra.* Petitioners' evidence in this regard is based principally upon the testimony of a United States Immigration Inspector. (Lamoreaus. Appts.' App. 15 to 17). Acting on the complaint of proctors for petitioners this inspector went aboard the vessel six or seven days after its arrival at Hampton Roads. He found that there was no hot or cold running water in the crew quarters; that the quarters were heated by a wood stove and that water was obtained from a hand pump located amidships. He particularly referred to the unsightly condition in the toilet where feces had been allowed to remain. Certainly the unsightly condition mentioned by him resulted from the failure of the men themselves to clean out the toilet. It is safe to assume that they

wanted conditions of the worst possible nature to greet the inspector.

The master admitted that the vessel was old, but denied the existence of any unsanitary or unsafe condition. He further admitted that there were a few leaks in the deck overhead the crew quarters, through which, during a heavy rain, a little fresh water would seep into the quarters. (Koutsoucos. Appts.' App. 8, 9). The District Court found:

> "The Steamship 'OLYMPOS' is an old vessel without modern equipment. There was no hot and cold running water. The crew's quarters were heated by a stove. Water was obtained from a hand pump. The showers were not in operation, but there were steam radiators aboard for the purpose of being installed upon the vessel's return to Antwerp. Toilet facilities were primitive. *The vessel was not unseaworthy at the time of the occurrences here involved,* although living conditions were not as comfortable as they might have been, and during storms there was some leakage of water into the crew's quarters." (Appts.' App. 12) (Italics supplied)

This finding that the vessel was seaworthy was referred to and left undisturbed by the Court of Appeals, 177 F (2) 785, 787. The Steamship "OLYMPOS" in 1947 and 1948, based on periodical surveys, was assigned the highest classification in "Lloyds Register of Shipping" as a vessel of the first class, well and sufficiently equipped. (Lloyds Register of Shipping, 1947-48; 1948-49; 1949-50). This classification, while not before the courts below, cannot be denied and convincingly supports the findings of those courts. The Court of Appeals below, in the case of *Hamilton* v. *United States,* 268 Fed. 15, 22, on the question of seaworthiness, commented on the fact that the master had testified that he held a certificate of seaworthiness from Lloyds Register of

Shipping. It is clear that the court considered such fact as material to the issue of seaworthiness.

It is submitted that the evidence supported the finding of seaworthiness, which finding was clearly not erroneous.

(2) *Petitioners were promptly paid their earned wages and their seamen's books were promptly delivered to them.*

The claims for earned wages and damages for retention of their seamen's books, are completely nullified by the undisputed facts in the case. The District Court found, (Appts.' App. 11, 13) on undisputed evidence that on October 3, 1947, two days after the petitioners had made their demands and left the vessel, all of them, with the exception of the two detainees, were paid off and their seamen's books delivered to them. The detainees, Psomopoulos and Mpounakis were, on October 6th, turned over to the United States Immigration authorities, at which time they were paid all accrued wages and received their seamen's books.

(3) *Petitioners neither requested nor were they entitled to a sum equal to the costs of repatriation.*

There is a vague claim asserted in the prayer of the libel for a sum equal to the costs of repatriating petitioners. The prayer of the libel requested the court to direct the respondents to account for all sums of money due petitioners, including repatriation. Only two of the petitioners testified in the case. The witness Psomopoulos was released from jail, where he had been lodged by United States Immigration authorities, on October 9th, 1947, and by his own admission, joined the Steamship "KEELAN" the following day. (Appees.' App. 18). The witness Efstiatiou joined

another vessel nine days after leaving the "OLYMPOS". (Appees.' App. 19)

There was no proof submitted that petitioners ever requested repatriation. Thirteen of the petitioners failed to testify in the case, and just what they did after leaving the Steamship "OLYMPOS" is unknown. It is safe to assume that they promptly joined other vessels. But clearly the court is here concerned with only the two witnesses who did appear and testify, and as to them, the fact that they found employment on other vessels, disposes of any rights they may have had to be repatriated. *The Sirius* (NDCal) 47 Fed. 825. Further, the transshipment of the detainee Psomopoulos was under the supervision of the United States Immigration authorities, pursuant to stipulation of proctors. (Appts.' App. 3)

(4) *The vessel discharged all of its obligations to the two petitioners who were detained by order of the United States Immigration authorities.*

Petitioners Psomopoulos and Mpounakis, who had been detained on the vessel by order of the Immigration authorities claimed that such detention was both cruel and inhumane because of the vessel's unseaworthiness. As to this, at page 788, the Court of Appeals, in holding that the ship had discharged all of its obligations in this regard, said:

> "Two of the libellants, Psomopoulos and Mpounakis, claimed in the libel that they had been ordered detained on board the vessel by the United States immigration authorities although they were entitled on account of the condition of the 'OLYMPOS' to transship on some other vessel, and hence their detention was cruel and inhumane. The evidence shows that the attorneys for the respective parties entered into a stipulation on

> October 6, 1947, whereby it was agreed that these men be removed from the ship by the immigration authorities, and detained by them until they could be placed on another vessel; and that the owners of the ship would guarantee to the authorities all the costs and expenses of removal, detention and deportation, which were to be paid by libellants. It was further agreed that nothing in the stipulation would be construed as an estoppel against any of the parties or as an admission or waiver of any rights of the parties. The evidence further shows that the two men were removed from the ship on or about October 6 at which time they were paid all of their earned wages and thereafter they were detained in jail at the direction of the immigration authorities for a few days until they were able to ship on other vessels. *It is obvious that the ship discharged all of its obligations to the men and was subject to no liability for their detention.*" (Italics supplied)

The evidence referred to by the Court is uncontradicted. The stipulation of proctors in the case (Appts.' App. 3) speaks for itself. Petitioner Mpounakis did not testify in the case, but petitioner Psomopoulos did, and he admitted (Appees'. App. 18) that they were detained in jail three days, and on the following day joined the steamship "KEELAN".

(5) *Petitioners are not entitled to the waiting time provisions of 46 USCA, Section 596.*

Certain of the petitioners claim that they are entitled to the "waiting time" provisions of 46 USCA, Section 596. This section, in effect, provides that the master or owner of vessels making foreign voyages, shall pay to every seaman his wages within twenty-four hours after the cargo has been discharged, or within four days after the seaman has been discharged, whichever happens first. It further provides that

any such master or owner who refuses or neglects to make such payments without sufficient cause, must pay to each seaman a sum squal to two days' pay for each day payment is delayed beyond the respective periods.

Clearly this statute has no application to the facts of this case. The men were paid all of their earned wages on October 3rd, 1947—the very day of their discharge and within two days after demand therefor. Even assuming that the statute covers the intervening period between demand and payment, the two day delay was not without sufficient cause. During that brief interval the master was in communication with the vessel's owner and the Greek Consul, both of whom were in New York. A representative of the Greek Consulate came to Newport News and exerted every effort to induce the men to return to the ship. Neither the master or owner refused or neglected to make payment, nor was the delay of two days arbitrary, willful or unscrupulous on their part so as to warrant any penalty.

Collie v. *Fergusson,* 281 U. S. 52, 74 L. Ed. 696.
The Easterner (CCA4), 47 F(2) 605.
Glandzis v. *Callinicos* (CCA2) 140 F(2) 111.

The Court of Appeals below, in commenting on this claim of waiting time, stated:—

> "A contention that nine of the libellants are entitled to two days waiting time under the provisions of 46 U.S.C.A. Section 596 is also devoid of merit. When the ship arrived in Norfolk on September 30, 1947, the men were paid off for the round voyage which had theretofore ended at Antwerp, the payment having been deferred, at their request, until their return to the United States in order that they might be paid in dollars. On October 1 they demanded that the captain consent immediately to a change of conditions on the

ship, and when he requested a short delay to consult the owner they refused and left the ship and on the next day filed the libel. In the meantime arrangements were made for the visit of the Greek Vice-Consul from New York and on October 3 in his presence all of the wages that the men had earned were paid and they were discharged from further service by mutual consent. The claim is that the libellants are entitled to two days' pay for each day in the interval between October 1 and October 3. It is obvious that it cannot be held that the delay in the payment was without sufficient cause, as required by the statute, since the right of the men to leave the ship on October 1 was not clearly established, and it was not known until the efforts of the Vice-Consul had failed that they would not return to their employment on the ship. It is noteworthy that although the libel claimed waiting time from October 1, the settlement between the ship and the men on October 3, under which they received the wages that they had earned up to the time that they left the ship, was made while they were represented by the same attorney who appears for them on this appeal."

(6) *Petitioners were not entitled to severance pay or damages for breach of contract.*

Petitioners made no claim for severance pay or damages for breach of contract in their libel filed in the District Court, nor was the libel ever amended to include such a claim. They contend (as to this trial-constructed claim) that the vessel being unseaworthy established the right of the men to leave the ship and recover, in addition to their earned wages, a sum in the nature of compensatory damages for breach of their contract of employment. They assert that under the General Admiralty Law their wages should be paid to the end of the voyage in accordance with the rule of *The Heroe,* (D. C. Del. 1884) 21 Fed. 525; or that

under American Statutory Law they should each receive one month's wages in addition to earned wages; or that under the Greek Law each became entitled to four months' wages plus repatriation.

The Steamship "OLYMPOS" was found to be seaworthy, but regardless of seaworthiness, petitioners fully released the vessel from any and all claims, as will be shown in the next succeeding heading. It is deemed unnecessary to burden the court with a discussion of the numerous cases cited by petitioners in support of their claim for severance pay. The facts of those cases are totally different from those of the instant case. In *The Heroe, supra,* which is the principal case relied upon by petitioners, the Delaware Court found the vessel to be unseaworthy because of defective engines and boilers, and further found that considerable repairs and alterations would have to be made to render the vessel seaworthy. Two of the members of the crew left that vessel because of unseaworthiness and recovered full wages. In the case at bar the vessel was neither unseaworthy nor was the voyage terminated. It is also deemed unnecessary to discuss the numerous American statutes cited by petitioners, or the alleged unproven provisions of the Greek Commercial Code. Even if applicable to a Greek vessel in a port of the United States, there is still no basis for any claim thereunder where the vessel is in fact seaworthy, or where the seamen, at the time of their discharge, have released the vessel from any claim.

Dealing with this phase of the case, the Court of Appeals below (p. 787) had the following to say:

> "(1) There was an allegation in the libel that the forecastle of the ship was in need of repairs to make it habitable, and a request that the court order a survey of the living quarters of the crew before the ship should

be permitted to sail; but there was no claim for one month's extra wages under the sections of the statute referred to." (46 U.S.C.A. Secs. 653-658). "Moreover, there was no proof that the conditions of the statute had been complied with. The proof did show, however, and the judge found, that on October 3, 1947, while the appellants were represented by an attorney, they were paid their earned wages, received their seamen's books and were discharged by mutual consent under the supervision of the Greek Vice-Consul who had come from New York to Norfolk, conferred with the men, and made an unsuccessful effort to induce them to return with the ship. *Upon this evidence it is plain that the sections of the statute referred to have no bearing on this case even if it be supposed that they apply to a Greek ship in a port of the United States,* or that, contrary to the findings of the District Judge, the leaky condition of the deck over the forecastle was sufficiently great to amount to unseaworthiness. The contention that if these statutes are not applicable, the rule laid down in The Heroe, D. C. Del., 21 F. 525, governs the case, is also untenable for that case merely held that when a vessel is unable to complete the voyage on account of unseaworthiness, the crew must be paid their wages for the period for which they were engaged.

"These considerations also disposed of the additional contention that the appellants were entitled to one month's wages payable under 46 U.S.C.A. Sec. 594, which provides that any seaman who has signed an agreement and is discharged before the commencement of the voyage without fault on his part *and without his consent,* shall be entitled to receive from the master, in addition to any wages he may have earned, a sum equal in amount to one month's wages as compensation." (Parenthesis and italics supplied.)

(7) *Petitioners released the vessel from any and all claims at the time of their respective discharges.*

The uncontradicted evidence as found by the courts below, conclusively shows that all of the petitioners, in the presence of a representative of the Greek Consulate, were discharged by mutual consent, received their wages to date of discharge and were given their seamen's books. The Consular representative made a special trip from New York to Newport News to investigate their complaints. He urged the men to continue in their employment but without success.

There were filed in the evidence, (Respondents' Exhibits "A" and "B") the individual wage accounts of the only two petitioners who testified, namely Psomopoulos and Efstiatiou. These exhibits show in detail the respective accounts for wages and are signed acknowledging receipt for all wages and in release of any claim therefor. The individual wage accounts of the other thirteen petitioners are not before the court as they did not testify in the case. It would follow, however, that these men also signed individual wage accounts. Respondents recognize that seamen's releases are carefully scrutinized by the courts, but the law is well established that such releases will not be set aside where executed freely, without deception or coercion, and where the seamen fully comprehend their act.

Garrett v. *Moore McCormack Lines, Inc.* 317 U. S. 239, 87 L. Ed. 239.
The Corapeake (CCA4) 46 F(2) 262.
Standard (CCA2) 103 F(2) 437.
Johnson v. *Andrus* 119 F(2) 287.

Clearly the seamen were cognizant of any rights they might have since they had shortly before filed their libel,

which was subscribed and sworn to by them. And certainly their releases were executed freely because they themselves insisted upon being discharged. There is no evidence of coercion or deception, but on the contrary it has been shown that every effort was made to induce the men to remain with the vessel, and that the discharge by mutual consent was pursuant to the authority of the Greek Consul in New York. It is the position of respondents that all of the petitioners have fully released the Steamship "OLYMPOS", her master, operator and owner of any and all claims asserted by them. The Court of Appeals below, in a well reasoned opinion (see quotation therefrom in the preceding heading) so concludes.

B Respondents' Exceptions to the Petitioners' Requests for Admissions of Facts and Genuineness of Documents Under General Admiralty Rule 32 B Were Properly Sustained by the Courts Below.

The contention of petitioners that the Courts below failed to follow General Admiralty Rule 32 B, which governs Requests for Admission of Facts and Genuineness of Documents, is devoid of merit. Petitioners filed their requests for admission of facts and genuineness of documents on August 23, 1948. (Appts'. App. 5) Respondents filed their exceptions thereto on September 2, 1948. (Appts'. App. 6) The District Court sustained the exceptions (Appts'. App. 11, 14) and its action was concurred in by the Court of Appeals (p. 788). As to this contention of the petitioners, the Court of Appeals states:

> "On August 23, 1948, the libellants filed certain requests for admission of facts and genuineness of documents under General Admiralty Rule 32B, 28

U.S.C.A. These requests sought in large part admissions by the respondents as to the truth and legal effect of certain testimony offered by the libellants. Exceptions to these requests were filed on September 2, 1948, in which it is pointed out that the appellants closed their case on April 20, 1948, when they offered the testimony of witnesses before the District Judge, and again on August 31, 1948 in open court. On September 2, 1948, the libellants made a motion for summary judgment. In the final decree the court sustained the exceptions to the requests for admission, overruled the motion of the libellants for summary judgment, and dismissed the libel. In his opinion the District Judge stated that the exceptions were sustained not only because the requests were filed long after the libellants had closed their case in chief, but also because the requests called for the admission of the truth of testimony already given, which it was the province of the court to weigh and to evaluate. The correctness of these rulings is too obvious to justify further discussion."

It is submitted that the Court of Appeals has fully answered this contention of the petitioners.

V. CONCLUSION

The contentions of petitioners have been denied by two courts. The decisions of those courts are based on concurrent findings of fact which are not clearly erroneous, but on the contrary, are substantially supported by the evidence. The decision of the Court of Appeals below does not conflict with any decision of this Court, any decision of other circuits or any prior decision of the Fourth Circuit. No departure from the accepted and usual course of judicial procedure has been shown.

This Court has said that it will not grant certiorari "to review evidence and discuss specific facts". *U. S.* v. *Johnson,* 268 U. S. 220, 69 L. Ed. 925. This Court has also said that it will not grant certiorari merely to give the defeated party another hearing. *Magnum Import Company* v. *Coty,* 262 U. S. 159, 67 L. Ed. 922.

We respectfully ask that the writ be denied.

BARRON F. BLACK,

HUGH S. MEREDITH,

WILLIAM C. COUPLAND,
Counsel for Respondents

Norfolk, Virginia